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7 **UNITED STATES DISTRICT COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**  
9 **SAN JOSE DIVISION**

11 SECURITIES AND EXCHANGE  
12 COMMISSION,

13 Plaintiff,

14 v.

15 SMALL BUSINESS CAPITAL CORP.; MARK  
16 FEATHERS; INVESTORS PRIME FUND,  
17 LLC; and SBC PORTFOLIO FUND, LLC,

Defendant

Case No.: 5:12-CV-03237-EJD

**UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION'S MOTION  
FOR ADMINISTRATIVE RELIEF  
SEEKING A RELEASE OF REAL  
PROPERTY FROM ASSET FREEZE AND  
INJUNCTIVE PROTECTION**

18 The United States Securities and Exchange Commission ("SEC" or "the Commission")  
19 hereby moves this Court, pursuant to Local Rule 7-11, for administrative relief to release certain  
20 real property from the asset freeze and injunctive protection entered by the Court on July 10,  
21 2012.

22 In support of this motion, the SEC states as follows:

- 23 1. On June 21, 2012, the Commission filed a complaint against Defendant Mark  
24 Feathers ("Feathers") and others alleging they had engaged in securities fraud and  
25 seeking a Temporary Restraining Order, an asset freeze, and the appointment of a  
26 receiver. (Docket nos. 1, 5, 6, 7, 8, 9).

1       2.     On July 3, 2012, Feathers consented to the entry of a preliminary injunction and  
 2 orders freezing assets and appointing a receiver. (Docket 29).

3       3.     On July 10, 2012, this Court issued the preliminary injunction and asset freeze  
 4 and appointed a permanent receiver over Feathers' assets. (Docket 34).

5       4.     On November 4, 2013, Feathers filed for protection under Chapter 7 of the  
 6 Bankruptcy Code in the United States Bankruptcy Court for the Northern District of  
 7 California, Case No. 13-55816 CN7. (Exhibit 1).

8       5.     On November 6, 2013, this Court issued a final judgment in this matter in favor of  
 9 the SEC. (Docket 622). The Court ordered Feathers to pay disgorgement in the amount of  
 10 \$7,782,961.07 (including prejudgment interest) and a civil penalty in the amount of  
 11 \$10,000. (*Id.*).

12      6.     On February 12, 2014, Feathers' bankruptcy matter was closed following the  
 13 Bankruptcy Court's issuance of a discharge. (Exhibit 2).

14      7.     On March 20, 2014, after the Court entered judgment in this matter and the  
 15 Bankruptcy Court closed Feathers' Chapter 7, the SEC recorded an abstract of judgment  
 16 thereby creating a judicial lien on Feathers' real property located at 1520 Grant Road,  
 17 Los Altos, CA 94024-6151 ("Feathers' residence"). (Exhibit 3).

18      8.     On November 3, 2014, Feathers successfully reopened his Chapter 7 case and  
 19 moved to avoid the SEC's judicial lien in the Bankruptcy Court. (Exhibit 4).

20      9.     On April 7, 2015, the Bankruptcy Court issued an order granting Feathers' motion  
 21 to avoid the lien pursuant to Section 522(f) of the Bankruptcy Code. 11 U.S.C. §522(f).  
 22 (Exhibit 5).

23      10.    On December 28, 2015, NBS Default Services, LLC acting on behalf of Wells  
 24 Fargo Bank, NA provided notice to Feathers that a trustee sale would be held to foreclose  
 25 on Feathers' residence as a result of his alleged failure to make mortgage payments.

26      11.    On January 7, 2016, Feathers filed a complaint in this Court (5:16-cv-00086-  
 27 PSG) against "BANK OF AMERICA, N.A., WELLS FARGO BANK THROUGH ITS

1 WHOLLY OWNED SUBSIDIARY WELLS FARGO HOME MORTGAGE, AND NBS  
 2 DEFAULT SERVICES, LLC" alleging, in part, that the defendants violated this Court's  
 3 asset freeze by filing a notice of trustee sale seeking to foreclose on Feathers' residence.  
 4 (Exhibit 6).

5 12. On January 14, 2016, this Court *sua sponte* referred Feathers' new complaint to  
 6 Judge Edward J. Davila to determine if it is related to this matter. (Exhibit 7).

7 13. It is undisputed that the asset freeze in this matter was entered at the request of the  
 8 SEC to inure to the benefit of the SEC and, through the agency, the investors injured by  
 9 Feathers' securities fraud. The ruling by the Bankruptcy Court avoiding the  
 10 Commission's lien removed any claim to the property located at 1520 Grant Road, Los  
 11 Altos, CA that the Commission may have had.

12 14. Based on the foregoing, there is no just reason for this property to be  
 13 covered by the asset freeze entered by the Court in this matter in favor of the SEC.  
 14 Moreover, the SEC does not oppose the foreclosure filed by Feathers' lender and, to the  
 15 extent such action may be necessary, the agency hereby consents to the exclusion of  
 16 Feathers' residence from the Court's asset freeze.

17 15. The Commission notes that because the asset freeze was entered on its  
 18 motion and for its benefit, it is questionable as to whether Feathers has standing to file the  
 19 complaint referenced in paragraph 11 above. Furthermore, Feathers' action improperly  
 20 seeks to use the asset freeze as a shield to prevent an action to foreclose on his residence  
 21 arising from his alleged non-payment to a mortgage lender.

**WHEREFORE**, this Court should issue an Order releasing Feathers' real property located at 1520 Grant Road, Los Altos, CA 94024-651 from the asset freeze and injunctive protection previously ordered on July 10, 2012.

Respectfully submitted,

DATED: January 15, 2016

/s/ Carol E. Schultze

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Carol E. Schultze

Attorney for the Plaintiff

## SECURITIES AND EXCHANGE COMMISSION

## **PROOF OF SERVICE**

I am over the age of 18 years and not a party to this action. My business address is:

[X] U.S. SECURITIES AND EXCHANGE COMMISSION, 100 F. Street, NE-5628, Washington, D.C. 20549. Telephone No. (202) 551-4958; Facsimile No. (202) 572-1372.

On January 15, 2016, I caused to be served the document entitled **UNITED STATES SECURITIES AND EXCHANGE COMMISSION'S MOTION FOR ADMINISTRATIVE RELIEF SEEKING A RELEASE OF REAL PROPERTY FROM ASSET FREEZE AND INJUNCTIVE PROTECTION** on all the parties to this action addressed as stated on the attached service list:

[ ] **OFFICE MAIL:** By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

[ ] **PERSONAL DEPOSIT IN MAIL:** By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

**[ ] EXPRESS U.S. MAIL:** Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.

[ ] **HAND DELIVERY:** I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

[X] **UNITED PARCEL SERVICE:** By placing in sealed envelope(s) designated by United Parcel Service (“UPS”) with delivery fees paid or provided for, which I deposited in a facility regularly maintained by UPS or delivered to a UPS courier, at Los Angeles, California.

**ELECTRONIC MAIL:** By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

[X] **E-FILING:** By causing the document to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

[ ] **FAX:** By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct.

Date: January 15, 2016

/s/Carol E. Schultze  
Carol E. Schultze